



EMILY S. ELLIOTT
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2020-4974
August 29, 2019

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management (DHRM) in relation to her June 28, 2019 grievance. The grievant alleges that the Virginia Department of Corrections (the “agency”) failed to comply with the response time limits set forth in the grievance procedure.

FACTS

On or about June 28, 2019, the grievant initiated a grievance with the agency. The issues she identified primarily related to her employment at an agency facility where she worked prior to her current employment at a different agency facility. Among other things, the grievant alleged that the previous facility had improperly withheld her pay and disparaged her to staff at her new facility. On August 12, 2019, the grievant sought to advance her grievance and sought an agency response.² On August 26, 2019, having not received the required response, the grievant sought a ruling from EDR as to whether the agency was out of compliance with the grievance procedure. On August 27, 2019, the agency sent to the grievant via email the agency head’s determination that the grievance was not qualified for a hearing.³

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The record reflects that the grievant’s request to advance her grievance did not reach the agency head for several days. It does not appear that the grievant notified her agency head or designee of the alleged noncompliance, as required by the grievance procedure. *See* Va. Code § 2.2-3003; *Grievance Procedure Manual* § 6.3.

³ It appears that the agency has processed the grievance as an expedited grievance, whereby the agency head may determine whether the grievance qualifies for a hearing after proceeding through only a single management step. *See* *Grievance Procedure Manual* § 3.4. While the grievant initiated her grievance via a Grievance Form A (rather than the Form A designated specifically for an expedited process), the grievant does not appear to object to the agency’s use of an expedited process to respond to her grieved issues.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.⁴ That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party of any noncompliance in writing and allow five workdays for the opposing party to correct it.⁵ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, which may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.⁶

In this case, assuming only for purposes of this ruling that the grievant did not receive a timely response from the agency head, the available facts indicate that such noncompliance has been corrected by the agency's response. The agency head issued a determination as to whether the grievance qualifies for a hearing, which the grievant received via email. Procedurally, then, the grievant's noncompliance claim as to the agency's lack of response is moot. Assuming that the grievant does not wish to raise further compliance issues for correction by the agency before advancing her grievance, the grievant now has the option to challenge the agency head's qualification decision by seeking a ruling from EDR, or to conclude her grievance.

EDR's rulings on matters of compliance are final and nonappealable.⁷



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ *Grievance Procedure Manual* § 6.3.

⁵ *See id.*

⁶ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will typically order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears to be driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁷ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).